

STATE OF SOUTH CAROLINA
COUNTY OF BAMBERG

Sheryl Mason,

Plaintiff,

v.

Denmark Technical College, Joann R. G.
Boyd-Scotland, Carolyn H. Fennell-McGay,
and Teneane Foster, in their individual
capacities

Defendants

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

C.A. No. 2013-CP-00223

RECEIVED

AUG 27 2014

SC Court of Appeals

ORDER

FILED
DENMARK COUNTY
AUG 12 AM 9:27
JAMES T. HERRIT
CLERK OF COURT
DENMARK COUNTY

Plaintiff Sheryl Mason (hereinafter "Plaintiff") filed this suit against Denmark Technical College (hereinafter "the College" or "DTC"), also naming as Defendants DTC employees Joann R. G. Boyd-Scotland (hereinafter "Boyd-Scotland"), Carolyn H. Fennell-McGay (hereinafter "Fennell-McGay"), and Teneane Foster (hereinafter "Foster") (collectively "Individual Defendants"), in their individual capacities. Plaintiff's Complaint sets forth two Causes of Action for defamation and civil conspiracy. The Individual Defendants are named only in Plaintiff's claim for civil conspiracy.

This matter came before the Court on April 22, 2014, upon a motion to dismiss filed on behalf of Individual Defendants, pursuant to Rule 12(b)(6), SCRCP. Ryan K. Hicks, of J. Lewis Cromer & Associates, appeared on behalf of Plaintiff; Lindsay Anne Thompson, of Duff, White & Turner, LLC, appeared on behalf of the Individual Defendants. After considering the motion, supporting memorandum, argument of counsel, and the materials presented at the hearing, the Court grants Individual Defendants' motion to dismiss.

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BACKGROUND

Plaintiff was employed as a nursing instructor by the College from January 3, 2012, until her termination in August 2012. At the time of the alleged events, Defendant Dr. Boyd-Scotland was the President of the College; Defendant Ms. Fennell-McGay was the College's Vice President of Academic Affairs; and Defendant Foster was a nursing instructor. Shortly after Plaintiff began working at the College, administrators and students reported concerns with Plaintiff. Of particular note were Plaintiff's actions related to the placement of her office. Plaintiff's office was located within one of the lecture classrooms, which required her to walk through the classroom to enter or exit her office. During lectures and exams, Plaintiff would noisily intrude upon the class and slam the classroom and her office doors. This became distracting to the students and other instructors. Additionally, Plaintiff frequently would engage in verbal altercations with other staff members in front of students. The College Administration decided to terminate Plaintiff from employment with the College because of her poor teaching skills, her unprofessional demeanor, and her inappropriate conduct.

Plaintiff filed suit in December 2013, alleging that the College defamed her and that Individual Defendants engaged in a civil conspiracy to terminate her from her position and impair her professional reputation.

STANDARD

In deciding a motion to dismiss under Rule 12(b)(6), the issue to be determined by the Court is considering whether, in the light most favorable to Plaintiff, the allegations of the Complaint state any valid claim for relief. Plyer v. Burns, 373 S.C. 637, 645 (2007); see also McNeil v. South Carolina Dept. of Corr., 404 S.C. 186, 190 (2013) ("In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint."). Rule 8,

SCRCP, requires a plaintiff to plead facts showing that the plaintiff is entitled to relief. If a plaintiff fails to plead facts sufficient to entitle her to relief, a motion to dismiss is proper. Moore v. City of Columbia, 284 S.C. 278 (Ct. App. 1985) (substantial justice is accomplished both when clearly inadequate and frivolous pleadings are summarily dismissed and when in-artfully stated but meritorious pleadings are upheld against a demurrer challenging their legal sufficiency).

ARGUMENT

Plaintiff's second cause of action attempts to set forth a claim for civil conspiracy against Boyd-Scotland, Fennell-McGay, and Foster. Under South Carolina law, civil conspiracy consists of three elements: "(1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) which causes the plaintiff special damage." Lee v. Chesterfield Gen. Hosp. Inc., 289 S.C. 6 (1986); Hackworth v. Greeywood at Hammett, LLC, 385 S.C. 110 (Ct. App. 2009); see also Todd v. South Carolina Farm Bureau Mut. Ins. Co., 276 S.C. 284 (1981) (Conspiracy has also been defined as the conspiring or combining together to do an unlawful act to the detriment of another or the doing of a lawful act in an unlawful way to the detriment of another). In order to establish a civil conspiracy, a plaintiff must allege facts where a court may reasonably infer the *joint assent* to the prosecution of an unlawful enterprise. Pridgen v. Ward, 391 S.C. 238, 246 (2010). (emphasis added).

While our courts have not required that a plaintiff assert in her complaint that unlawful means were used or unlawful acts were committed in furtherance of the alleged conspiracy, civil conspiracy "is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action." Angus v. Burroughs, 358 S.C. 498, 502 (Ct. App. 2004) (citing Future Group, II v. Nationsbank, 324 S.C. 89, 100 (1996)). Also,

damages pled in a claim for civil conspiracy must be special damages pled with specificity and unique to the civil conspiracy. Hackworth, 385 S.C. at 117.

I. Plaintiff Has Failed To Adequately Plead Facts Necessary To State A Claim For Civil Conspiracy That Is Plausible On Its Face.

For Plaintiff to survive a motion to dismiss, she must sufficiently allege overt acts carried out pursuant to the conspiracy and special damages; both of which must be separate and independent from other allegations in Plaintiff's Complaint. Lee, 289 S.C. at 10; Hackworth, 385 S.C. at 115, 117. The failure to properly plead additional acts in furtherance of the conspiracy, separate and independent from other wrongful acts alleged in the Complaint, will merit dismissal of the claim. Hackworth, 385 S.C. at 115-116. Plaintiff's Complaint also must set forth facts from which the Court could reasonably infer the joint assent of the minds of two or more parties in taking the actions about which Plaintiff complains. Pye v. Estate of Fox, 369 S.C. 555 (2006). In other words, Plaintiff needs to plead facts that reasonably would demonstrate that Boyd-Scotland, Fennell-McGay, and Foster "came together" to combine and conspire against her.

Here, Plaintiff's Complaint merely recites the elements of civil conspiracy with little to no factual support. Her Complaint states legal conclusions couched as factual allegations, but beyond naming the alleged conspirators, Plaintiff's Complaint includes no specific factual allegations. For example, Plaintiff's Complaint only alleges "that at various times at various places" the Individual Defendants "schemed, conspired, and planned in secret" to carry out their conspiracy. See Complaint ¶ 23. Such ambiguous allegations hardly suffice to state a claim for civil conspiracy. In addition, Plaintiff alleges that this unspecified and vague conspiracy included furthering the Individual Defendants' "vendetta and personal agenda to harm the Plaintiff," and made "false and defamatory statements against her," yet provides no

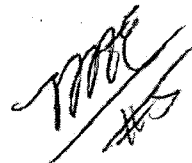


facts to support this allegation. See Complaint ¶¶ 23 and 25. Plaintiff's nebulous allegations fail to properly state a claim against the Individual Defendants, and therefore, must be dismissed.

II. **Plaintiff's Cause Of Action For Civil Conspiracy Fails To Assert Special Damages Against Individual Defendants Boyd-Scotland, Fennell-McGay, and Foster.**

The third element of a civil conspiracy claim, special damages, requires that damages occur as result of the alleged conspiracy itself in addition to any damages alleged as a result of any other claims. Vaught v. Waites, 300 S.C. 201 (Ct. App. 1989) (“the gravamen of the tort is the damage resulting to plaintiff from an overt act done pursuant to a common design”); see also City of Hartsville v. South Carolina Mun. Ins. & Risk Financing Fund, 382 S.C. 535, 546 (2009) (quoting Pye 369 S.C. at 567-68, “Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in *other causes of action.*”) (emphasis added). These special damages must be pled with specificity. Hackworth, 385 S.C. at 117. Dismissal is appropriate when the damages claimed for conspiracy overlap with or are subsumed by the damages sought for other causes of action. Id.; See Benedict College v. National Credit Sys., Inc., 400 S.C. 538, 546 (2012).

Here, in her claim for civil conspiracy, Plaintiff alleges she is entitled to damages for pain and suffering, the loss of her job, and other intangible damages. See Complaint ¶ 26 . While worded slightly differently, these are the same damages Plaintiff claims as special damages under her defamation claim. See Complaint ¶ 21, wherein Plaintiff claims her losses from the defamation cause of action are for reputational loss, embarrassment, humiliation, emotional and mental anguish; the intentional and willful conduct to punish and deter and to make an example; and for attorneys' fees and costs. Even assuming, *arguendo*, that Plaintiff could articulate a damage that is not subsumed by or overlaps with the damages already sought,

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she failed to plead those damages in her Complaint, thus precluding her from establishing a claim for civil conspiracy against Boyd-Scotland, Fennell-McGay, and Foster. See Lee, 289 S.C. at 382 (“two or more persons”).

Without pleading separate special damages, Plaintiff’s civil conspiracy claim fails as a matter of law and must be dismissed.

III. Plaintiff’s Civil Conspiracy Claim Must Be Dismissed Against the Individual Defendants Because Hiring Decisions Are Within The Scope Of Boyd-Scotland and Fennell-McGay’s Official Duties And Foster Cannot Conspire With Herself.

In addition to Plaintiff’s failure to state a civil conspiracy claim, Individual Defendants Boyd-Scotland, Fennell-McGay, and Foster are further entitled to dismissal of Plaintiff’s civil conspiracy claim because actions and decisions relating to the hiring of instructors at the College are within the official duties of Boyd-Scotland and Fennell-McGay. Furthermore, as employees of the College, the Individual Defendants are unable to engage in a conspiracy as that would constitute a “corporation”—the College-- conspiring with itself. McMillan v. Oconee Memorial Hospital, Inc., 367 S.C. 559, 564-565 (2006).

South Carolina courts have recognized that public officials and employees are generally immune from liability for civil conspiracy. Specifically, when public officials or employees act within their authority in determining whether to hire an individual, “they cannot be sued for doing what they had a right to do.” Angus v. Burroughs & Chapin Co., 358 S.C. 498 (Ct. App. 2004).

Here, Boyd-Scotland and Fennell-McGay, at the time of the alleged events giving rise to this suit, were employed, respectively, as the College’s President and Vice President of Academic Affairs, both with responsibility for implementing the hiring procedures the College has established for hiring instructors, such as Plaintiff. See Complaint ¶¶ 3 and 4. Although

Plaintiff broadly states that Boyd-Scotland and Fennell-McGay acted outside “their business duties and supervisory roles,” (See Complaint ¶ 23), Plaintiff fails to set forth any factual allegations that could lead this Court to reasonably infer that these Defendants acted outside their authority in terminating the Plaintiff from her position as a nursing instructor. In the absence of factual support, Boyd-Scotland and Fennell-McGay cannot be sued in their individual capacities for civil conspiracy arising out of their actions that allegedly resulted in Plaintiff’s termination from employment with the College. See Pridgen, 391 S.C. at 244, (quoting McMillan, 367 S.C. 559, 564 (2006) “A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation”).

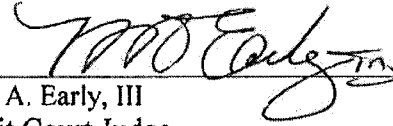
As the Court has dismissed the civil conspiracy claim against Boyd-Scotland and Fennell-McGay on these grounds, it only follows that the civil conspiracy claim against Foster also must be dismissed. As the sole remaining Defendant against whom a civil conspiracy claim is pending, Foster cannot engage in a civil conspiracy. See Benedict, 400 S.C. 538, 545 (2012) (“The tort of civil conspiracy has three elements: (1) a combination of *two or more persons*, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage.” Hackworth, 385 S.C. at 115 (citing Vaught, 300 S.C. 201, 208 (Ct.App.1989)) (emphasis added).

CONCLUSION

For the reasons stated above, Plaintiff fails to state a claim for civil conspiracy against Boyd-Scotland, Fennell-McGay and Foster in their individual capacities. Therefore, the Complaint is dismissed against the Individual Defendants in its entirety.

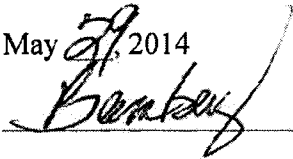
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WHEREFORE, Defendant's motion is granted, and it is so ORDERED.



Doyet A. Early, III
Circuit Court Judge

May 27, 2014



_____, South Carolina